

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3462 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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ATISHUKHRAM UMEDRAM & ORS.

Versus

STATE OF GUJARAT & ANR.

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Appearance:

Shri P.J. Vyas, Advocate, for the Petitioners

Shri D.N. Patel, Asst. Govt. Pleader, for the Respondents

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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 27/02/96

ORAL JUDGEMENT

The common order passed by the Competent Authority at Surat (respondent No.2 herein) on 22nd February 1984 under sec. 8(4) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) as affirmed in appeal by the common appellate order passed by the Urban Land Tribunal at Ahmedabad (the appellate authority for convenience) on 29th December 1987 in seven different appeals is under challenge in this petition under art. 226 of the Constitution of India. By his

impugned order, respondent No.2 declared the holding of the petitioners to be in excess of the ceiling limit by 6689.90 square meters.

2. The facts giving rise to this petition move in a narrow compass. Each petitioner filed his separate declaration in the prescribed form under sec. 6(1) of the Act with respect to his holding within the urban agglomeration of Surat. The holding of the petitioners was common as they were co-owners of the properties shown in the respective declaration. Respondent No.2 thereupon processed all the forms together. After observing necessary formalities under sec. 8 of the Act, by his common order passed on 22nd February 1984 under sec. 8(4) of the Act, respondent No.2 came to the conclusion that the petitioners were in the nature of an association of persons and were therefore entitled to only one ceiling unit and consequently their joint holding was declared to be in excess of the ceiling limit by 6689.90 square meters. Its copy is at Annexure A to this petition. Each petitioner separately carried the matter in appeal. A copy of the specimen memo of appeal is at Annexure B to this petition. All the appeals were heard together. By the common order passed on 29th December 1987 in the aforesaid 7 appeals, the appellate authority dismissed them. Its copy is at Annexure C to this petition. The aggrieved petitioners have thereupon approached this Court by means of this petition under art. 226 of the Constitution of India for questioning the correctness of the order at Annexure A to this petition as affirmed in appeal by the appellate at Annexure C to this petition.

3. Whether or not the co-owners of a property can be said to be an association of persons is no longer res integra. The Division Bench of this Court in its ruling in the case of Chhaganlal Trikamdas Thakker & Ors. v. Competent Authority, Rajkot and others reported in 1994(1) Gujarat Current Decisions at page 1 has held that co-owners of a property cannot be said to be an association of persons. The aforesaid Division Bench ruling of this Court is binding to me. Even otherwise, I am in respectful agreement therewith. The authorities below have taken a view contrary to the aforesaid binding Division Bench ruling of this Court and that view cannot be sustained in law.

4. The combined total area of the holding of the petitioners is to the tune of 8187.90 square meters. It is owned by in all 7 persons. The property in question is within the urban agglomeration of Surat. The ceiling limit prescribed for the urban agglomeration of Surat under the Act is 1500 square meters. The petitioners are therefore entitled to hold the ceiling limit up to 10500 square meters. Their

combined holding to the tune of 8187.90 square meters is therefore very much below the ceiling limit.

5. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure A to this petition as affirmed in appeal by the appellate order at Annexure C to this petition cannot be sustained in law. It has to be quashed and set aside.

6. In the result, this petition is accepted. The common order passed by the Competent Authority at Surat (respondent No. 1 herein) on 22nd February 1984 under sec. 8(4) of the Act at Annexure A to this petition as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad on 29th December 1987 in 7 appeals of the petitioners herein at Annexure C to this petition is quashed and set aside. It is hereby declared that the holding of the petitioners is not in excess of the ceiling limit for the purposes of the Act. Rule is accordingly made absolute with no order as to costs.

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